IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 139/2006
(Suresh Kumar Vs. Lalchand)

Date of Order : 11/10/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. C.S.Mandora for the petitioner.
Mr. B.P.Dadhich for the non-petitioner.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 30.11.2005 passed by Additional Chief Judicial Magistrate No.2, Jodhpur (for short 'the trial court' hereinafter) whereby the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter) was dismissed on his failure to appear before the trial court.

I have heard learned counsel for the parties. Carefully gone through the order impugned as also the order sheets of the trial court dated 23.7.2005 and onwards. On 23.7.2005, the complainant was present, however, the accused non-petitioner failed to appear before the trial court, his bail

bonds were forfeited and he was summoned by a warrant and proceeding under Section 446 Cr.P.C. was initiated against him. The matter was posted on 12.9.2005. On 12.9.2005 also, the accused-non-petitioner did not appear. However, the Presiding Officer was on leave and the matter was adjourned to 20.11.2005. It appears that in between 12.9.05 to 20.11.2005, on 29.10.2005 the accused-non-petitioner appeared before the trial court and sought the matter to be taken up for his bail. The trial court, on surrender of the accused non-petitioner, released him on bail. This date was not known to the petitioner, obviously there is nothing on record to show that while preponing the date, the trial court intimated the petitioner complainant. On 21.11.2005, the petitioner complainant was not present and therefore, his evidence was closed and by order impugned dated 30.11.2005, the trial court dismissed the complaint.

Keeping in view the fact that the accused non-petitioner failed to appear before the trial court regularly, more particularly on 23.7.2005 and thereafter the matter was for securing his presence and the complainant had hardly any knowledge that when the accused non-petitioner would appear. In the circumstances, the reasons given by the petitioner for his non-appearance that on the relevant date his brother fell sick and was taken to hospital by him as also he was not aware of the date, appear to be bonafide.

Keeping in view of the decision of Hon'ble Supreme Court in Mohd. Azeem Vs. A. Venkatesh and Anr. 2003 Cr.L.R (SC) 211 in my view, the order impugned dated 30.11.2005 deserves to be set aside and the complaint deserves to be restored.

In the result, the petition is allowed. The order impugned dated 30.11.2005 passed by the trial court is set aside. The complaint filed by the petitioner is restored. Both the parties to appear before the trial court on 06.11.2006. No fresh notice is necessary.

(H.R.PANWAR),J.

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